UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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GENE RAGUSA,

Plaintiff,

-against-

CITY OF NEW YORK; RAYMOND KELLY, individually and as Commissioner of the New York City Police Department; MICHAEL BLOOMBERG, individually and in his capacity as Mayor of the City of New York; MATHEW PERONE; AHMED KHAN; AND KEVIN DIMINO, individually and in their capacities as officers of the New York City Police Department.

Defendants.

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PARTIES' PROPOSED JURY CHARGE

12 Civ. 7294 (VEC)(SN)

The parties respectfully request, pursuant to Rule 51 of the Federal Rules of Civil Procedure, that the Court give the following instructions to the jury.[1]

[1] In addition, the parties respectfully reserve the right to include additional substantive jury charges, if necessary, at the time of trial based upon the course of the proceedings. Defendants have not included a proposed charge on their qualified immunity defense, because they respectfully submit that the issue of qualified immunity is one for the Court to decide, not the jury. Zellner v. Summerlin, 494 F.3d 344, 368 (2d Cir. 2007); Stephenson v. Doe, 332 F.3d 68, 80-82 (2d Cir. 2003). Defendants respectfully request the opportunity to submit Special Interrogatories for the jury so that the jury can resolve any materials issues of fact that will allow the Court to decide whether Defendants Perone, Khan, and Dimino are entitled to the defense of qualified immunity as a matter of law. See Id. Should the Court indicate that it intends to charge the jury on qualified immunity, defendants respectfully reserve the right to provide a proposed qualified immunity charge at that time.

PART I: GENERAL INSTRUCTIONS.

Duty of the Court

We are now approaching the most important part of this case, your deliberations. You have heard all of the evidence in the case, as well as the final arguments of the lawyers for the parties. Before you retire to deliberate, it is my duty to instruct you as to the law that will govern your deliberations. As I told you at the start of this case, and as you agreed, it is your duty to accept my instructions of law and apply them to the facts as you determine them.

Regardless of any opinion that you may have as to what the law may be or ought to be, it is your sworn duty to follow the law as I give it to you. Also, even if any attorney or other person has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow.

Because my instructions cover many points, I have provided each of you with a copy of them not only so that you can follow them as I read them to you now, but also so that you can have them with you for reference when you begin your deliberations. In listening to them now and reviewing them later, you should not single out any particular instruction as alone stating the law, but you should instead consider my instructions as a whole.

Duty of the Jury

Your duty is to decide the fact issues in the case and arrive, if you can, at a verdict. You, the members of the jury, are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the credibility of the witnesses, you resolve such conflicts as there may be in the testimony, and you draw whatever reasonable inferences you decide to draw from the facts as you determine them.

In determining the facts, you must rely upon your own recollection of the evidence. Nothing that the lawyers said in their opening statements, in their closing arguments, in their objections, or in their questions is evidence. Nor is anything I may have said evidence.

The evidence before you consists of just three things: The testimony given by witnesses that was received in evidence, the exhibits that were received in evidence, and any stipulations of the parties that were received in evidence.

Testimony consists of the answers that were given by the witnesses to the questions that were permitted either here in court or in the depositions that were read into evidence. Please remember that questions are never evidence; only answers are evidence. However, at times, during the course of this trial, counsel for the plaintiff and the defendants may have incorporated into their questions statements that they asked the witness to assume as true. If the witness denied the truth of these statements, and if no other evidence was introduced to prove the assumed fact was true, then you may not consider it to be true simply because it was contained in a lawyer's question. On the other hand, if the witness acknowledged the truth of the statement, you may, of course, consider the witness's answer as evidence that the statement is in fact true. Also, you may not consider any answer that I directed you to disregard or what I directed be stricken from the record. Likewise, you may not consider anything you heard about the contents of any exhibit that was not received in evidence.

It is the duty of the attorney for each side of a case to object when the other side offers testimony or other evidence that the attorney believes is not properly admissible. Counsel also has the right and duty to ask the court to make rulings of law and to request conferences at the side bar out of the hearing of the jury. All such questions of law must be decided by me. You should not show any prejudice against any attorney or party because the attorney objected to the admissibility of evidence or asked for a conference out of the hearing of the jury or asked me for a ruling on the law.

I also ask you to draw no inference from my rulings or from the fact that upon occasion I asked questions of certain witnesses. My rulings were no more than applications of the law, and my questions were only intended for clarification or to expedite matters. You are expressly to understand that I have no opinion as to the verdict you should render in this case.

Duty of Impartially

You are to perform your duty of finding the facts without bias or prejudice or sympathy as to any party, for all parties are equal under the law. You are to perform your final duty in an attitude of complete fairness and impartially. You are not to be swayed by rhetoric or emotional appeals.

It must be clear to you that if you were to let prejudice or bias or sympathy interfere with your thinking, there would be a risk that you would not arrive at a true and just verdict. So do not be guided by anything except clear thinking and calm analysis of the evidence. Your verdict will be determined by the conclusions you reach, no matter whom the verdict helps or hurts.

Burden of Proof: Preponderance of the Evidence

Some of you have heard of proof as "beyond a reasonable doubt," which is the proper standard of proof for a *criminal* trial. However, a plaintiff in a *civil* case does not have to satisfy that requirement, and therefore you should put it out of your mind. In order to prevail in a civil case, a party who is making a claim against another party has the burden of proving his claim by a "preponderance of the evidence."

Here, the party that is making a claim is the plaintiff, Gene Ragusa.

In this civil trial, it is Plaintiff's burden to establish each and every element of his claim by a preponderance of the credible evidence. The "credible evidence" means such testimony, exhibits, or other evidence that you find worthy of belief. To establish an element of a claim by a preponderance of credible evidence means to prove that that element is more likely true than not true. If Plaintiff fails to prove, by a preponderance of the evidence, any element of his claim, then you must find for Defendant on that claim.

What does a "preponderance of the evidence" mean? A preponderance of the evidence means the greater weight of the evidence, that is more than a 50% chance probability. It refers to the quality and persuasiveness of the evidence, not to the number of witnesses or documents. In determining whether a claim has been proved by a preponderance of the evidence, you may consider the relevant testimony of all witnesses, regardless of who may have called them, and all the relevant exhibits received in evidence, regardless of who may have produced them.

If you find that the credible evidence on a given issue is in exact balance between the parties – that is, it is equally probable that one side is right as it is that the other side is right – or that the evidence produced by the party having the burden of proof is outweighed by evidence against his claim, then you must decide that issue against the party having the burden of proof, or the plaintiff in this case. That is because the party bearing the burden, in this case the plaintiff, must prove more than equality of evidence – he must prove the element at issue by a preponderance of the evidence. On the other hand, the party with the burden of proof need prove no more than a preponderance. So long as you find that the scales tip, however slightly, in favor of that party – that what he claims is more likely true than not true – then the element will have been proved by a preponderance of evidence.

Direct and Circumstantial Evidence

In deciding whether a party meets its burden of proof, you may consider both direct evidence and circumstantial evidence.

Direct evidence is evidence that proves a disputed fact directly. It does not require any other evidence. It does not require you to draw any inferences. A witness's testimony is direct evidence when the witness testifies to what he saw, heard, or felt. In other words, when a witness testified about what is known from his own personal knowledge by virtue of his own sense – what he sees, touched, or hears – that is direct evidence. The only question is whether you believe the witness's testimony. A document or physical object also may be direct evidence when it can prove a material fact by itself, without any other evidence or inference. You may, of course, have to determine the genuineness of the document or object.

Circumstantial evidence is evidence that tends to prove a disputed fact by proof of other facts. To give a simple example, suppose that when you came into the courthouse today the sun was shining and it was a nice day, but that the courtroom blinds were drawn and you could not look outside. Then later, as you were sitting here, people began walking in with wet umbrellas and, soon after, others walked in with wet raincoats.

Now, on our assumed facts, you cannot look outside of the courtroom, and you cannot see whether or not it is raining. So you have no direct evidence of that fact. But on the combination of the facts about the umbrellas and the raincoats, it would be reasonable for you to conclude that it had begun raining.

That is all there is to circumstantial evidence. Using your reason and experience, you infer from established facts the existence or the nonexistence of some other act.

The law makes no distinction between direct and circumstantial evidence. Circumstantial evidence is of no less value than direct evidence and you can consider either or both and can give them such weight as you conclude is warranted.

You are to consider all the evidence in the case, both direct and circumstantial, in determining what the facts are and in arriving at your verdict.

Inferences

During the trial you may have heard the attorneys use the term "inference," and in their arguments they may have asked you to infer, on the basis of your reason, experience, and common sense, from one or more proven facts, the existence of some other facts.

An inference is not a suspicion or a guess. It is a logical conclusion that a disputed fact exists that we reach in light of another fact that has been shown to exist.

There are times when different inferences may be drawn from facts, whether proved by direct or circumstantial evidence. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion that you, the jury, are permitted to draw — but not required to draw — from the facts that have been established by either direct or circumstantial evidence. In drawing inferences you should exercise your common sense.

So, while you are considering the evidence presented to you, you are permitted to draw, from the facts that you find to be proven, such reasonable inferences as would be justified in light of your experience.

Keep in mind that the mere existence of an inference against the defendants does not relieve the plaintiff of the burden of establishing his case by a preponderance of the evidence. In order for the plaintiff to obtain a verdict in his favor, you must still believe from the credible evidence that the plaintiff has sustained the burden cast upon him.

Witness Credibility

It must be clear to you by now that the parties are asking you to draw very different conclusions in the case. An important part of that decision will involve making judgments about the testimony of the witnesses you have listened to and observed. In making these judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence that may help you to decide the truth and the importance of each witness's testimony.

Your decision whether or not to believe a witness may depend on how that witness impressed you. Was the witness candid, frank and forthright; or did the witness seem to be evasive or suspect in some way? How did the way the witness testified on direct-examination compare with how the witness testified on cross-examination? Was the witness consistent or contradictory? Did the witness appear to know what he or she was talking about? Did the witness strike you as someone who was trying to report his or her knowledge accurately? These are examples of the kinds of common sense questions you should ask yourselves in deciding whether a witness is or is not truthful.

How much you choose to believe a witness may also be influenced by the witness's bias. Does the witness have a relationship with any of the parties that may affect how he or she testified? Does the witness have some incentive, loyalty, or motive that might cause him or her to shade the truth? Does the witness have some bias, prejudice or hostility that may cause the witness – consciously or not – to give you something other than a completely accurate account of the facts he or she testified to? However, an interested witness is not necessarily less credible than a disinterested witness. The fact that a witness is interested in the outcome of the case does not mean that the witness has not told the truth. It is for you to determine from the witness's demeanor on the stand and such other tests as your experience dictates whether or not the witness's testimony has been colored, intentionally or unintentionally, by the witness's interest.

You should also consider whether the witness had an opportunity to observe the facts he or she testified about, and whether the witness's recollection of the facts stands up in light of the other evidence in the case.

In other words, what you must try to do in deciding credibility is to size up a person just as you would in any important matter where you are trying to decide if a person is truthful, straightforward, and accurate in his or her recollection.

Finally, should you, in the course of your deliberations, conclude that any witness has intentionally testified falsely as to a material fact during the trial, you are at liberty to disregard all of his testimony on the principle that one who testifies falsely as to on material fact may also testify falsely as to other facts. You are not required, however, in all circumstances, to consider such a witness as totally unworthy of belief. You may accept so much of his testimony you believe to be true and reject only such part you conclude is false.

PART II: SUBSTANTIVE LAW

In this case plaintiff Gene Ragusa alleges two claims against the defendants: that plaintiff was unlawfully stopped, detained, and searched on or about June 29, 2011, and that plaintiff's vehicle was searched without probable cause or reasonable suspicion. Plaintiff brings these claims pursuant to Section 1983 of Title 42 of the United States Code (which I will call "Section 1983").

To establish a federal claim pursuant to Section 1983, in this case, plaintiff must prove, by a preponderance of the evidence, the following two elements:

First, that the alleged incident happened as plaintiff claims, and that such conduct deprived the plaintiff of a right protected by the Constitution of the United States, and

Second, that the conduct of the defendants was the proximate cause of the injuries and damages sustained by plaintiff.

I will now explain to you these two elements that plaintiff must prove by a preponderance of the evidence:

First Element: Deprivation of a Constitutional Right

To establish this element of his Section 1983 claim plaintiff must show that he was intentionally or recklessly deprived of a constitutional right by the defendants.

First, the plaintiff must show by a preponderance of the evidence that the defendants committed an acts or acts alleged by plaintiff;

Second, that the alleged act or acts caused the plaintiff to suffer the loss of a constitutional right; and

Third, in performing the act or acts alleged the defendants acted intentionally or recklessly.

The determination of whether the defendants committed an act or acts as alleged by plaintiff is a function of your role as fact finders. As I explained earlier, it is your duty to consider all of the elements, assess the credibility of the witnesses and determine the facts.

If you determine that the defendants committed an act or acts as alleged by plaintiff, you must next determine whether that act caused the plaintiff to suffer the loss of a constitutional right. I'll now explain plaintiff's claims in more detail.

UNLAWFUL STOP AND SEARCH OF PLAINTIFF'S PERSON

The Fourth Amendment protects each of us against unreasonable searches and seizures by the police. The Fourth Amendment is violated, however, only if you find that the police officers acted unreasonably.

A police officer has the right to stop a person in a public place when the officer reasonably suspects that the person has committed or is about to commit a crime and ask the person his name, address, and to explain his conduct. N.Y. Crim. Proc. Law § 140.50(1); Sibron v. New York, 392 U.S. 40, 88 S. Ct. 1889 (1968). The police officer need not actually establish that the individual engaged in criminal activity before stopping the person. "A law enforcement official, given appropriate circumstances, may approach an individual acting in a **suspicious** manner if the investigative stop is based on facts that generate a '**reasonable suspicion'** that the individual is engaged in criminal activity." United States v. Ramirez-Cifuentes, 682 F.2d 337, 341 (2d Cir. 1982). For the purpose of determining whether police officers had reasonable suspicion to make an investigatory stop, the actual motivations of the individual officers involved in the stop are irrelevant. Holeman v. City of New London, 425 F.3d 184, 190 (2d Cir. 2005).

An officer conducting a stop does not have to have knowledge of all or any of the facts and circumstances to establish the reasonable suspicion that is required. An officer acts lawfully when he reasonably relies upon the information received by other law enforcement officials. Thus, if the collective knowledge of the officers on the scene is of such weight and persuasiveness as to convince an officer of ordinary intelligence, judgment, and experience that there is reasonable suspicion, then the officer relying on that information also has reasonable suspicion to conduct the investigatory stop. A police officer conducting a stop is entitled to act on information received from other officers based upon the presumption that those other officers furnishing information to the officer possess the necessary reasonable suspicion.

In addition, police officers are not required to ignore the relevant characteristics of a particular location, such as whether it is a high-crime area, in determining whether circumstances are sufficiently suspicious to warrant further investigation. Illinois v. Wardlow, 528 U.S. 119, 124-25, (2000). "The determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior." United States v. Ramirez-Cifuentes, 682 F.2d 337, 341 (2d Cir. 1982). Additionally, you should consider that an individual's nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. Illinois v. Wardlow, 528 U.S. 119, 124, 120 S. Ct. 673 (2000).

On the other hand, an officer's mere "hunch" or "unparticularized suspicions" cannot create a reasonable suspicion to commence an investigative stop. Terry v. Ohio, 392 U.S. 1, 27 (1968).[2]

During a stop based on reasonable suspicion, officers may conduct a "pat-down frisk" if the officer "observes unusual conduct which leads him reasonably to conclude in light of

[2] Defendants object to this paragraph because the charge proposed above same is sufficient.

his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous." Terry v. Ohio, 392 U.S. 1, 30 (1968). Further, "where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled… to conduct" this pat down frisk, which is intended be "a carefully limited search of outer clothing of such persons in an attempt to discover weapons…." Id. However, an officer cannot "conduct a general exploratory search for whatever evidence of criminal activity he might find." Id.[3]

You must determine, based on the standards that I have just described, whether the stop and search occurred in the manner plaintiff claims and if so, whether defendants Perrone, Dimino, and Khan, violated plaintiff's rights protected by the Fourth Amendment.

UNLAWFUL SEARCH OF PLAINTIFF'S VEHICLE

Plaintiff claims that defendants Perrone, Dimino, and Khan illegally searched his vehicle. Defendants Perrone, Dimino, and Khan deny that they searched plaintiff's vehicle.

Separate from the "reasonable suspicion" standard I explained to you earlier, the search of plaintiff's vehicle is subject to the "probable cause" standard.[4] Probable cause exists if the facts and circumstances known to the defendants at the time of the search, including information supplied to them before conducting the search, either by officers or informants, were such as to lead a reasonably prudent person to believe that plaintiff had committed or was committing a crime. "Probable cause does not demand certainty but only a fair probability that contraband or evidence of a crime may be found." United States v. Gonzalez, 441 F. App'x 31 (2d Cir. 2011) quoting Arizona v. Grant, 556 U.S. 332, 129 S. Ct. 1710, 1714 (2009). In other

[3] Defendants object to the last sentence of this paragraph as the charge proposed is sufficient.

[4] Defendants object to this sentence as the charge proposed is sufficient as is.

words, probable cause to search a vehicle is measured by the totality of the circumstances faced by an officer when determining whether to search a vehicle.

The existence of probable cause is not measured by the strict standards required for criminal conviction. An officer need not have been convinced beyond a reasonable doubt at the time of the search that a criminal offense was being or is being committed. There need not have been evidence proving each of the elements of the suspected offense at the time the officer conducted the search.

If you determine that defendants' conduct caused the plaintiff to suffer the loss of a constitutional right, you then need to determine whether defendants acted intentionally or recklessly. I'll now explain intent in more detail.

INTENT

As set forth above, with respect to all of plaintiff's claims, to find a deprivation of a constitutional right for purposes of Section 1983, a plaintiff must prove not only (a) that a defendant committed the acts alleged and (b) that those acts caused plaintiff to suffer the loss of a constitutional right, but also (c) that in performing the alleged acts, a defendant acted intentionally or recklessly.

An act is intentional if it is done knowingly — that is, if it is done voluntarily and deliberately and not because of mistake, accident, negligence, or another innocent reason. An act is reckless if done in conscious disregard of its known probable consequences.

In determining whether defendants acted with the requisite intention or recklessness, you should remember that while witnesses may see and hear and so be able to give direct evidence of what a person does or fails to do, there is no way of looking into a person's mind. Therefore, you may have to draw inferences based on the facts presented and your belief or disbelief with respect to those facts.

Second Element: Proximate Cause

The second element that the plaintiff must prove by a preponderance of the evidence to succeed on his Section 1983 claim is that the conduct of the defendants was the proximate cause of the his injuries and damages.

Proximate cause means that there must be a sufficient causal connection between the act of a defendant and any injury or damage sustained by plaintiff. If you find that any of a defendant's acts were a substantial factor in bringing about or actually causing plaintiff's injury, that is, if the injury was a *reasonably foreseeable* consequence of any of the defendant's acts or omissions, then the defendant's acts or omissions were a proximate cause of plaintiff's injuries. If an injury was a direct result or a reasonably probable consequence of the defendant's acts or omissions, it was proximately caused by such acts or omissions. On the other hand, defendants are not liable if they did not cause plaintiff's injuries and damages.

PART IV: DAMAGES

General Instructions[5]

If you find that the plaintiff has proved, by a preponderance of the evidence, all of the elements of his claims for relief, you must then decide if he suffered any injuries as a result of the violation of his rights.

The fact that I am giving you instructions on damages does not mean that you must reach the issue of damages. You should not reach the issue of damages unless you find that the plaintiff has established liability on his claims. Also, just because I give you instructions on

[5] Adapted from MARTIN A. SCHWARTZ & GEORGE C. PRATT, Section 1983 Litigation: Jury Instructions, Instruction § 18.01.2 (2005 Supplement).

damages does not mean that I have any opinion about liability. It is for you alone to decide whether the defendants are liable to the plaintiff.

Should you decide that the plaintiff has proved his claims by a preponderance of the evidence, you must consider awarding **three**[6] types of damages: compensatory damages, nominal damages and **punitive** damages. I will explain the law concerning each of these types of damages to you.

Compensatory Damages[7]

If you return a verdict for the plaintiff, then you may award the plaintiff such sum of money as you believe will fairly and justly compensate him for any injury you believe he actually sustained as a direct consequence of the conduct of defendants. These damages are called compensatory damages. The purpose of compensatory damages is to make the plaintiff whole – that is, to compensate the plaintiff for the damage that he has proven by a preponderance of the credible evidence.

Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendants. You should not award compensatory damages for speculative injuries, but only for those injuries which the plaintiff has actually suffered, or that the plaintiff is reasonably likely to suffer in the future.

Moreover, you shall award actual damages only for those injuries that you find plaintiff has proven by a preponderance of credible evidence to have been the direct result of conduct by the defendant you have found liable. That is, you may not simply award actual damages for any injury suffered by plaintiff — you must award actual damages only for those injuries that are a direct result of actions by defendants, and that are a direct result of conduct by defendants that was a violation of plaintiff's rights.

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[6] Defendants do not agree that the jury should be charged on punitive damages.

[7] Unless otherwise cited, all paragraphs in this section, entitled "Compensatory Damages", were adapted from MARTIN A. SCHWARTZ & GEORGE C. PRATT, Section 1983 Litigation: Jury Instructions, Instruction § 18.01.1 (2005 Supplement).

If you determine that defendants deprived plaintiff of a constitutional right, and you determine that the deprivation resulted in some injury to the plaintiff that was proximately caused by defendants, the plaintiff is entitled to an award of compensatory damages. Kerman v. City of New York, 374 F.3d 93, 125-26 (2d Cir. 2004). The compensatory damages recoverable for loss of liberty are separable from damages recoverable for such injuries as physical harm, embarrassment, or emotional suffering; even absent such other injuries. Id.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that the plaintiff prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances.

Plaintiff may not recover for any injury that existed prior to the incidents at issue, or for any injury from which he suffered that was not caused by the violation of his rights at issue here. You may, however, compensate the plaintiff to the extent that you find that he was further injured by defendants' violations of his rights.

Actual damages must not be based on speculation or sympathy. They must be based on the evidence presented at trial, and only on that evidence.

Nominal Damages[8]

If you return a verdict in the plaintiff's favor on his § 1983 claims – unlawful stop and search of his person, and unlawful search of his vehicle – but find that the plaintiff failed to meet his burden of proving, by a preponderance of the credible evidence, that he suffered any actual injuries, then you must return an award of damages in some nominal or token amount, not to exceed the sum of one dollar. Nominal damages are the law's way of recognizing that constitutional rights must be scrupulously observed, even when constitutional violations have not been shown to have caused actual injury.

Nominal damages may be awarded when the plaintiff has been deprived of a constitutional right but has suffered no actual damages as a natural consequence of that deprivation. The mere fact that a constitutional deprivation occurred is an injury to the person entitled to enjoy that right, even when no actual damages flow from the deprivation. Smith v. Wade, 461 U.S. 30, 52-56 (1983). Therefore, if you find that the plaintiff has suffered no injury as a result of a defendants' conduct other than the fact of a constitutional deprivation, you must award nominal damages not to exceed one dollar.

Damages: Multiple Claims

Plaintiff is entitled to only one recovery, if at all, sufficient to reasonably compensate him for his injuries. I therefore instruct you that if you find that plaintiff has prevailed on more than one claim, you may not award additional compensatory damages for the same injury. You should award an amount of compensatory damages equal to the total damages you believe will fairly and justly compensate plaintiff for the separate injuries he suffered. But

[8] MARTIN A. SCHWARTZ & GEORGE C. PRATT, Section 1983 Litigation: Jury Instructions, Instruction § 18.03.1 (2005 Supplement).

you should not compensate plaintiff for the same injury twice simply because you find a defendant liable for multiple claims.

Punitive Damages[9]

Plaintiff also seeks punitive damages in this case. If plaintiff has proven by the preponderance of the evidence that a defendant is liable, then you may, but you are not required, to determine whether the plaintiff is entitled to punitive damages.

In order to be entitled to punitive damages, you must find that the plaintiff has clearly established that the acts of the defendant(s) causing the proven injury were wanton or showed a callous or reckless disregard for the rights of others. The purpose of punitive damages is to punish shocking conduct and to set an example to deter others from the commission of similar offenses in the future.

However, punitive damages are not awarded as a matter of right but are awarded only if you find that plaintiff has clearly proven that the defendants acted so outrageously and evidenced such a degree of malice or callousness that an example and deterrent needs to be provided to assure that the defendants and others will be less likely to engage in such conduct in the future.

If you do decide to award punitive damages, the amount of punitive damages should be reasonable and should be proportionate only to the need to punish and deter.[10]

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[9] Defendants maintain that the jury should not be instructed on punitive damages at this time. Although defendants contend that, after hearing the evidence, the Court will determine that no rational jury could find punitive damages against the defendants in this case; defendants propose the following language on punitive damages should the Court find that the charge is necessary.

[10] Smith v. Wade, 461 U.S. 30, 52-56 (1983).

Taxes and Attorneys' Fees

If you do make an award of damages, such an award is not subject to federal or state income taxes and you should not consider such taxes in determining the amount of damages or increase the award for taxes. Also, you should not concern yourselves with what a plaintiff would have to pay his attorneys for fees or expenses in deciding damages. Federal law provides for a separate award of attorneys' fees should the plaintiff prevail in this case. The award of attorneys' fees in such circumstances is a matter to be determined by the Court.

Damages: Final Word

Again, let me repeat that the fact that I have instructed you as to the proper measure of damages should not be considered as intimating that I have any view as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are required to be given for your guidance in the event you should find that any actual damages were proved by a preponderance of the evidence by plaintiff in this case according to the instructions I have given to you.

PART V. CONCLUDING INSTRUCTIONS

Selection of Foreperson; Right to See Exhibits and Hear Testimony: Communications with the Court

You will shortly retire to the jury room to begin your deliberations. As soon as you get to the jury room, please select one of your number as the foreperson, to preside over your deliberations and to serve as your spokesperson if you need to communicate with the Court. During the course of your deliberations, the foreperson's opinion will have no greater weight than any other juror.

You will be bringing with you into the jury room a copy of my instructions of law. I will shortly send you a verdict form on which to record your verdict. Once the verdict form has been completed, you must give it to the foreperson to sign and date. If you want to see any of the exhibits, please send me a note requesting the exhibits you'd like to review.

If you want any of the testimony, that can also be provided, either in transcript or read-back form. But, please remember that it is not always easy to locate what you might want, so be as specific as you possibly can be in requesting portions of testimony.

During the course of the trial you may have taken notes. While you may refer to these notes, they shall not take precedence over what is in the trial transcripts: if there is a difference or discrepancy between your notes and the trial transcripts, the trial transcript must be viewed as the accurate recitation of the testimony.

Any of your requests, in fact any communication with the Court, should be made to me in writing, signed by your foreperson, and given to the marshal, who will be available outside the jury room throughout your deliberations. After consulting with counsel, I will respond to any question or request you have as promptly as possible, either in writing or by having you return to the courtroom so that I can speak with you in person.

Verdict; Need for Unanimity; Duty to Consult

You should not, however, tell me or anyone else how the jury stands on any issue until you reached your verdict and recorded it on your verdict form.

Each of you must decide the case for yourself, after consideration, with your fellow jurors, of the evidence in the case; and your verdict must be unanimous. In deliberating, bear in mind that while each juror is entitled to his or her opinion, each should exchange views with his or her fellow jurors. That is the very purpose of jury deliberation: to discuss and consider the evidence; to listen to the arguments of fellow jurors; to present your individual views; to consult with one another; and to reach a verdict based solely and wholly on the evidence.

If, after carefully considering all the evidence and the arguments of your fellow jurors, you entertain a conscientious view that differs from the others, you are not to yield your view simply because you are outnumbered. On the other hand, you should not hesitate to change or modify an earlier opinion that, after discussion with your fellow jurors, no longer persuades you.

In short, the verdict must reflect each juror's conscientious determination and it must also be unanimous.

I thank you and the parties thank you for your time and attentiveness.

Dated: New York, New York
July 27, 2015

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